IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 302 OF 1999

Balu @ Bharat Sahebrao Shinde
Convict Prisoner No. C-10541.
Yerwada Central Prison,
Yerwada, Pune 411 006 .. Appellant
V/s. (Orig.accused)

The State of Mahaarashtra ..Respondent

Mr. Shekhar Ingawale,Advocate Appointed for the appellant/accused.

Smt. V.R. Bhosale, A.P.P. for the State.

CORAM : S.B. MHASE &
ANOOP V.MOHTA, JJ.

DATE : 3RD DECEMBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. The appellant was charged, tried and convicted for the offence punishable under Section 302, 201 and 498A of Indian Penal Code (I.P.C.) for having committed the murder of his wife Shushila @ Maya Bharat Shinde. Therefore, this appeal against the order of conviction.

2. The prosecution case, as emerges from the record is that one Shushila @ Maya (the deceased) was the legally wedded wife of the appellant-accused. The Marriage took place in the year 1980. The appellant is

serving as a driver in the Police Department and therefore, they were living together in room No.185 of the Police Line, situated at Shivaji Nagar Pune. They have two sons and one daughter. The relation between the deceased and appellant were strained after 1986, as accused had developed illicit relations with one Mangala Patil. The appellant thereafter started to ill-treat and harass the deceased. Various letters informing the same were written by the deceased to her parents. Some complaints were also made against the accused with other police officers, including higher officers. The appellant had also written some letters to his in-laws and expressed his desire to give divorce to his wife, the deceased. The appellant had also informed to his in-laws that he would not be responsible, if something happened to his wife Maya.

2A. On 9/10/1989, as per the prosecution, in the evening the deceased and appellant-accused were seen together at their house along with their children. However, on the next day i.e. on 10/10/1989 morning only the children of the accused were seen at their house. Nobody saw deceased thereafter. It is the prosecution case, that the appellant was on night duty

from 10 p.m. of 9/10/1989 to 3 a.m. of 10/10/1989. The appellant came to his residential house along with police jeep bearing No. MTJ-7595. The appellant, between 9/10/1989 and 10/10/1989 and around 3 a.m., committed the murder of his wife by strangulating her with rope and thereafter carried her dead body in the said jeep and threw it in the valley of Katraj Ghat. Thereafter, he came back to Pune and deposited the said vehicle in the Motor Transport Section, at about 4.30 a.m., on the same day. The appellant, at about 19.15 p.m., on 10/10/1989 lodged a missing complaint (Exh.14) in respect of deceased Maya at Shivaji Nagar Police Station, Pune. On the same day i.e. on 10/10/1989, the accused took their children to Ulhasnagar to his brother. On the basis of the said missing report, a missing Case No.173/1989 was registered. Mr. Parshuram Jadhav (P.W. 20), Police Official started the enquiry based on the same missing complaint and submitted his report on 7/12/1989. He could not collect useful information about the same.

2B. The appellant, thereafter, wrote a letter Exh. 58 to his father-in-law and informed that the deceased was missing from the house from the night of 9/10/1989.

The family members of the deceased, thereafter, searched and enquired about the deceased, at different places, including with the neighbours of the accused. The complainant (the brother of the deceased P.W.16) thereafter, had lodged the complaint (Exh.59) on the basis of which a report was prepared by Mr. Jadhav, P.W.20, (Exh.105) and forwarded the same to the Police Inspector, Deccan Gymkhana Police Station. The Crime No. 1130/1989 was accordingly registered on 8/12/1989. Mr. Jadhav started investigation of the said crime and arrested the accused on 9/12/1989. Room No. 185 was searched and panchanama was drawn accordingly by Mr. Jadhav. He had recorded the statement of Mr. Ashok Jadhav (P.W. 17). Thereafter, the investigation was handed over to Mr. Ashok Chandgule, P.W. 23, along with all the necessary papers, collected during the investigation. Mr. Chandgule thereafter had recorded the statements of Shobha Kadam, Dilip Choudhari, Shahu Naiknavare, Mohan Yadav and Mr. Degaonkar, ASI MT. Section (P.Ws.4,14,10, and 7) on 9/12/1989. As the appellant had shifted to rented premises at Karve Nagar from the quarter No. 185, Mr. Jadhav, P.W. 20 therefore, searched the said rented premises occupied by the appellant. Various articles were seized under the

panchanama Exh.60. Mr. Jadhav had also recorded the statements of sons of the accused, who were staying in Ulhasnagar. Mr. Chandugule had recorded various statements including of P.W.3 and P.W. 13, 14. In presence of panchas on 12/12/1989, Mr. Chandgule took the search of jeep NO. MTJ-7595 and found two pieces of broken bangles and one onion in the said jeep (Exh.18).

2C. On 13/12/1989 at the instance of the accused the skeleton (dead body) of the deceased was found at the place, in the Katraj Ghat, accordingly, it was seized in presence of the panchas. Some other articles were also attached under panchanama Exh. 33. The photographs were taken by Vijay Tote (P.W. 18) of the skeleton and other articles. The inquest panchanma was drawn Exh.55 of the said skeleton. Dr. Laxmikant Bade, P.W. 19 had examined the skeleton on the spot and opined that it was of the female. The said skeleton alongwith other articles were sent to Sasoon Government Hospital, Pune. The post mortem was accordingly conducted by Dr. Bade on 14/12/1989 and found 5 post- mortem fractures and Temporal fractures of thyriod bone antemortem. He opined the death due to compression of neck and accordingly, issued the certificate (Exh.95) and post

mortem notes (Exh.96) Various other articles were also found along with the skeleton in the valley of Katraj Ghat and therefore, they were seized under the panchanma Exh. 24. According to the prosecution those were belonged to the deceased. The same had been identified by the other witnesses also.

2D. The complainant had produced various letters written by the deceased Maya, expressing her anguish and the ill-treatment by the appellant and involvement of the appellant with the said Mangala Patil. The specimen of hand writing and signatures of the appellant were taken in presence of the panchas under panchanama Exh.50. The Log book of the police vehicle was also sent for hand writing opinion. Mr. Ranjan Gavankar, P.W.24 had examined all these documents and given his report Exh.148. It was also revealed that the jeep in question was driven about 38 Km. between intervening period of 9th and 10th October 1989, while Mr. Mukhari was doing night rounds in the said jeep driven by the appellant. However, the total running shown in the log book of the vehicle was 99 Km., as proved by Mr. Suresh Pawar, P.W. 21. They had recorded and verified the distance of the total milage of the route on which the

appellant had officially driven the vehicle on that night and that figure was 38 km. only. As per prosecution, as the vehicle was driven by the appellant, also up to Katraj Ghat, excessive millage was shown in the log book. Therefore, as alleged, the appellant must have carried the dead body of the deceased in the said jeep and threw it in the valley, so as to destroy the evidence of the offence of the murder.

3. The appellant was chargesheeted. However, he denied the same and pleaded not guilty. His defence was of total denial and false implication. The appellant in his statement under Section 313 of Criminal Procedure Code (Cr.P.C.) had defended himself by stating that he was on duty through out the night between the intervening period of 9th October and 10th October, 1989 and when he returned to his house early in the morning on 10/10/1989 he came to know that his wife maya was missing. Therefore, he had lodged missing report in the police Station at about 19.15 hours. He had also asserted that the skeleton which was found in the valley of Katraj Ghat was not of his deceased wife. The prosecution has examined 24 witnesses. No defence witness was examined by the appellant.

4. The learned Judge after considering the material placed on the record and submissions made by the parties held that; the appellant husband of the deceased Maya subjected her to cruelty during her life time; the skeleton found in the valley of Katraj Ghat was of the deceased Maya; the death of the deceased was homicidal; the death was caused by or in consequences of the act of the accused; the prosecution has proved that the accused had done the said act with the intention of causing the death of Maya and thereby committed the offence of murder; the accused knowingly, wilfully had committed the offence of murder and caused the evidence of the said offence to disappear by throwing the dead body of the deceased in the valley of Katrajghat with the intention of screening himself from the legal punishment. On this foundation the appellant has been convicted and sentenced to suffer rigorous imprisonment for the offence punishable under Section 498A, 302 of I.P.C. The appellant has also been convicted under Section 201 of I.P.C. and sentenced to suffer R.I. for two years and also liable for the consequential orders. It has been directed that the substantive sentences to run concurrently.

5. Heard the learned Counsel appearing for the appellant and the learned A.P.P. for the State. After going through the record of the case, with the assistance of the respective Advocates and after considering the respective submissions made by the advocates, we are of the view that the prosecution has proved its case beyond reasonable doubt. Even though there was no eye witnesses, the circumstantial evidence as linked and proved by the prosecution in the present case and as considered and appreciated by the learned Judge, according to us, need no interference.

6. Following are the evidential circumstances which have completed the chain and pin pointed that the appellant and no one else had committed the offence in question.

7. BACKGROUND MOTIVE AND ILL-TREATMENT:- Taking into account, the evidence of P.W. 3 Mayavati, P.W. 4 Shobha, P.W. 7 MOhan, P.W. 13 Nilesh, P.W. 14 Dilip, P.W. 16 Ramesh, we are of the view that it supports the prosecution case about the ill-treatment faced by the deceased from time to time. All these witnesses have

proved that there were illtreatment and harassment by the accused to the deceased Maya and her children at the hands of the appellant. Most of them were neighbours and knew the appellant, as well as, the deceased. Merely, because there was no complaint lodged earlier by these witnesses about the harassment or illtreatment, that itself cannot be the reason to discard the evidences of these neighbours.P.W. 13 Nilesh, the son of the appellant, has also supported the case of prosecution in this regard. Merely because he was 8 years old at the time of recording his statement this testimony of the child eye witness can not be disbelieved. P.W. 16 Ramesh, the brother of the deceased had lodged the complainant after more than two months. This evidence is also cannot be over looked, for the delay and being the interested witnesses. The F.I R. Exh.59, letters by the deceased, telegram sent by the deceased, also speak about the illtreatment and harassment , as referred above. Those letters and the letters even written by the accused also reflect that the appellant had developed illicit relations with Mangala from the year 1986 and since, thereafter, he had started ill-treating the deceased. The appellant used to beat the deceased with the belt, which was recovered

from the house of the appellant. The appellant had driven out the deceased and the children on many earlier occasions. At one time they took shelter out side the house. The appellant was moving around with the said Mangala during these periods. In this background, according to us also prosecution has proved that the appellant had motive of harassing and ill-treating the deceased. This back ground also reflects the guilty mind and the guilt of the appellant. The learned Judge therefore, has rightly considered this aspect while convicting the accused.

8. LAST SEEN TOGETHER AND OPPORTUNITY TO COMMIT THE CRIME:- The prosecution has relied on the evidence of P.W. 3 Mayavati, P.W. 4 Shobha, P.W. 4 Mohan, P.W. 10 Naiknavare, P.W. 13 Nilesh Shinde, P.W. 14 Dilip Choudhari to prove that the appellant was with the deceased on the fateful night of 9/10/1989. He came in the house late at night on 9/10/1989. He had full opportunity to commit the crime. The appellant’s duty was over by 3 a.m., still he had driven the said jeep at his residence. He had used it for henious purpose up to 4.30 a.m. and thereafter parked the jeep at the Depot and the same was accordingly noted in the log book

register. P.W. 3 and P.w. 4 have deposed that they saw Maya on 9/10/1989 at night, they knew the clothes, which were on the person of the deceased. Merely, because their statements were recorded two months, after the commencement of the investigation, that itself cannot be the reason to discard the evidence of these witnesses, so also the articles recovered, as it did not bear specific identification marks and were easily available in the market, as sought to be contended by the appellant Counsel. In the present circumstances of the case, there is no reason to disbelieve the prosecution case. All these articles were recovered from the specific places, at the instance of the appellant.

9. The above witnesses have supported the prosecution's case that the deceased was in the house along with the appellant between the period in question and he had full opportunity to commit the murder of his wife. The learned Judge therefore, has rightly considered this aspect. We are also concurring the same view.

10. The appellant has committed the murder. The

material witness is P.W. 13 Nilesh Shinde, the minor son of the appellant. He has deposed positively in support of the prosecution's case in his evidence and on the material aspect and the same remained undisturbed. Merely, because there are some lacunas in the statement about the date and time of the incident and that he was only 8 years of age at the relevant time, that itself cannot be sufficient, to discard the testimony of this eye witness. The appellant had shifted their children including Nilesh P.W. 13 on 10/10/1989, immediately, after the date of incident and proceeded on a long leave. In view of the other corroborative circumstantial evidence and materials on the record, we find the testimony of this witness is trustworthy. After going through the testimony of this witness P.W. 13, we find that this witness has deposed as under:

> "I got up by hearing shouts of my mother. When I stealthily saw, I found my father strangulating my mother by pressing her neck. After some time my mother become quiet. My father then wrapped bed-sheet around her and lifted her to a jeep. I went to sleep. Next day morning when myself, my brother and sister crying in the name of my mother, my father told me that my maternal uncle had come and my mother had left with him. He told me to tell police on inquiry that my mother had gone with Aba Mama. In the afternoon my father took us to Kalyan to our uncle."

10A. This witness has also identified the clothes and ornaments, broken bangle pieces, saree and blouse of his deceased mother, including rope and bed-sheet in which his mother was wrapped by the appellant. Even if there are minor omissions and improvements, it will be wrong to discard the evidence of this witness, especially when in his cross-examamination he remained unshaken to the fact that he saw the accused pressing neck of his mother and thereafter wrapped in the bed-sheet and put her in the jeep, except to the extent of missing of these statements in the police statement.

11. P.W. 19 Dr. Bade has proved the certificate of cause of death and post-mortem notes, which supports the prosecution case that the deceased had died due to compression of neck with rope. Therefore, the death of victim was a homicidal.

12. P.W. 18, Mr. Tote, a photographer also has proved the photographs of the (dead body) skeleton. The inquest panchanama also supports the prosecution’s case. Dr. Bade P.W. 19 has opined that the skeleton was of a female, aged about 25 to 35 years. The skeleton (dead body) was found lying in Katraj Ghat on 13/12/1989.

Some missing bones were found on 14/12/1989 also. This witness was accompanied by the Sweeper and attendance from the department to the spot. The dead body was examined on the spot itself, after inquest panchanama. This witness has also observed, one black blouse, one faith menstrual pad, thread around waist, one petticoat, one faint yellow synthetic saree, one thick Solapuri bed sheet, one metallic ear ring, one rope measuring 165 inches in length, loope of rope around the neck of the deceased, cloth stained with blood and mud. The cause of death was certified by this witness due to compression of the neck. This witness has also noticed and proved scalp skin with hair and rope entangled with hair of the deceased. In the Cross-examination even though he has admitted that the body was completely decomposed and apart from the clothes, the skeleton (dead body) was unidentifiable, he has duly maintained the cause of death by compression of neck. This witness has maintained his statement that hair were entangled with the rope and the same rope was handed over to the police. The photographer has also corroborated Dr. Bade, P.W. 19.There are other circumstantial evidence to corroborate and link that the accused had committed the murder and the skeleton (dead body), as found was of

the deceased.

13. The clothes and the various articles belonging to the deceased were identified and proved by the prosecution thorough P.W.3,P.W.4, P.W.6, P.W 7, P.W./12 and P.W. 13. The memorandum of panchanama of the skeleton (dead body) of the deceased Maya was duly proved by these witnesses. The rope which was used by the appellant for strangulation was also attached and identified by P.W. 13 Nilesh. The other ornaments and the pieces of the bangles were also duly identified by this witness. The various panchanamas drawn from 9th December, 1989 till 23rd February, 1990, were also duly proved by the prosecution. By these panchanama, various articles belonging to the deceased, which were found at the different places, at different time, were also duly proved. This includes the attachment of the bunch of hair of the deceased, which matched with the hair collected from the place of recovery of the skeleton (dead body). P.W. 20 Parshuram Jadhav has proved the same. Therefore, the cumulative effect of the evidence of these witnesses, apart from the other circumstantial evidence, are sufficient to link the case of the prosecution that the appellant had committed the murder

and attempted to destroy or screen the evidence to avoid the legal punishment. The appellant in fact, had misguided by lodging the false missing complaint, as referred above. The conduct of the appellant therefore, is also relevant to support the prosecution case, in this matter.

14. The Skeleton was not referred to any expert, however, in the facts and circumstances of the case, there were other material to show that the skeleton belongs to the deceased Maya. In the present case delay in sending body for post mortem is also not very fatal. Doctor’s opinion about the cause of death is also supports the prosecution case.

15 . The learned Judge therefore, has rightly observed that the deceased was murdered by the appellant and tried to destroy the evidence to avoid a legal punishments.

16. SCREENING OF THE EVIDENCE BY REMOVING DEAD BODY:- As noted above, P.W. 13, Nilesh Shinde, has categorically stated in his evidence that after throttling her mother, the appellant, had wrapped the

dead body by the bed sheet and taken the same towards the jeep. The appellant, thereafter, in the next morning, when enquired, told to his children, that his mother (the deceased) left the house with his maternal uncle and also instructed them to inform to the police accordingly, if enquired. P.w. 13 has corroborated the fact that in the same after noon, the appellant left them at Kalyan, at their uncle's place. As per the record and in evidence of Naiknavare and others, these school going children, immediately, on the next day, were sent at the residence of his brother. As we have noted earlier, the appellant was on duty, being a driver of the jeep in question. He brought the jeep at his house at about 3 a.m. and after committing the crime took the body from his house to Katraj Ghat. Thereafter, he thrown the dead body in the valley and brought the jeep at 4.30 a.m. to the MT Section. This prosecution's story has been corroborated and proved by P.w. 13, P.W. 8 Ramesh, P.W. 10 Naiknavare and P.w. 14 Dilip. The appellant immediately, on 11/10/1989 had also proceeded on long leave on medical ground. (Exh.48). The appellant left the old house and shifted to Karve road. This fact has been proved by the prosecution through the evidence of P.W. 1 Murlidhar,

P.W. 3, Mayavati Mane, and P.W. P.S.I.. This fact also demonstrates the conduct and guilty mind of the accused. He had prepared the background for the false case and misguided the investigation. This also shows that the appellant had pre determined plan and intention to commit the murder of his own wife and thereafter to screen the evidence and or to destroy the evidence by destroying the dead body of the deceased and accordingly, had thrown the same in the Katraj Ghat, as recorded above.

17. The prosecution has also brought on the record that the said jeep was used by the accused for the purpose of destroying the dead body of the deceased. The appellant had used the vehicle from his house to Katraj Ghat and returned from Katraj Ghat to MT Section. The actual kilometres for the night rounds with Shri Mukhri (ACP), was around 38 Kilometres. However the additional 35 km. as recorded, as per the entry made by him in the log book Exh.28 and 29, shows that he had used the said vehicle from his house to Katraj Ghat also. To prove this, the evidence was led of P.W. 8 Ramesh, P.W. 10 Naiknavare, which have corroborated and proved the prosecution case to complete the chain of the

events.

18. We have also noted that panchanama Exh.18 was drawn on 12/12/1989, whereby, two bangle pieces from the vehicle in question were attached and the same was duly proved by P.W. 2 Shivaji. It is proved on the record that these bangle pieces were belong to the deceased. The other bangle pieces were found near the skeleton of the deceased. Some bangle pieces belongs to the deceased were also found at the original place of the crime, apart from other articles, including bunch of hairs and same was proved by P.W. 20 Parshuram Jadhav. The Chemical Analyser's report also supports the prosecution case that the bunch of hairs attached in the room No.185 were the hairs of the deceased. The rope which was found around the neck of the victim also entangled with the hairs of the victim. The C.A. report shows that all the hairs were of woman and appeared to be similar. The Chemical Analyser's report has also proved that the bangle pieces found in the jeep and bangle pieces found near the dead body were same. Therefore, the prosecution has proved the link of each circumstances which shows that the appellant had committed the crime and thereafter took steps to destroy

the evidence to avoid the punishment. Therefore, the appellant has committed crime under section 302 r/w 201 of I.P.C., as all the ingredients of the same have been proved by the prosecution.

18A. RECOVERY OF THE SKELETON (DEAD BODY) :- We cannot over look the fact that in the present case the skeleton and other articles were found in the valley of the katraj ghat about 100 feet down from the road. It cannot be said that such place is easily accessible to all. Therefore, the discovery and recovery of the incriminating articles and skeleton in the present case, nowhere supports the submission of defence Counsel based on the principle of Section 27 of the Evidence Act. The place in question cannot be said to have free access to the general public. This evidence cannot be discarded. This evidence connect the crime with the appellant. The prosecution has, proved and identified the skeleton (body), as well as, the articles belongs to the deceased, through the evidence of P.Ws.3,4,12,13, 15, 16, 19 and 23.

19. MISGUIDING EXPLANATION AND MISSING REPORT, SUBSEQUENT CONDUCT AND CIRCUMSTANCES:- As noted above,

the appellant, after committing the crime and destroying the evidence of the crime, in the next morning itself, as stated by P.W. 13 Nilesh, was pacifing the children by falsely stating that their mother had gone with maternal uncle and also told them to answer accordingly, if enquired by the police. He immediately shifted the children at his brother's place. On 10/10/1989 at about 19.15 he had lodged false report in the police station. In the missing report, apart from false information of her missing he had wrongly described the details of her clothes. The clothes and other articles which were discovered from the skeleton (dead body) of the deceased were different than the reported by the appellant, in his missing report. We have noted that there is nothing to show how the appellant knew about the colour of clothes, when the deceased was missing from the house, since early morning itself. As recorded in the evidence P.W. 13 and as corroborated by others, the appellant and deceased were last seen together. In the circumstances, there is apparent falsehood, contradiction and inconsistencies in the appellant's own statement, on the record. The appellant had told his children that his mother left the house with his maternal uncle. In missing complaint he referred that

the deceased Maya was missing since morning. The appellant had also informed to his in-laws about missing of Maya by the letter. All these conduct read with own statement given in pursuance to section 313 of Cr.P.C. also reflects and are added circumstances, in favour of prosecution and against the appellant including the conduct of the accused and defence of the accused of total denial as per his statement under Section 313 of Cr.P.C. The statement of the accused u/s 313 Cr.P.C. is also supports the prosecution, The appellant, as recorded, not led any evidence to justify his own statement and or case. The appellant was non cooperative to the police as per the evidence of P.W. 12 P.S.I. Jadhav. He did not allow to meet the children especially to P.W.16 Ramesh, the complainant.

20. LETTERS WRITTEN BY THE ACCUSED AND THE DECEASED-HAND WRITING REPORT:- In the present case the investigating officer had collected the disputed documents and took the specimen hand writing and actual hand writing of the accused and sent it for report (Exh. 134 and 135). The same is duly proved by P.W. 24 Ranjan Gavankar and P.W. 23 Ashok Chandgule. Therefore, merely because the name of the appellant, is

missing from the letters by that itself cannot be said that the letters were not sent by the accused, especially, when his hand writing is substantially proved. Any way, according to us also the other circumstantial evidences are sufficient, as observed by the learned Sessions Judge, to convict the appellant.

21. DELAY IN LODGING COMPLAINT/FIR:- There is no doubt in the present case that there is delay in filing the complaint, as the offence as recorded, was committed between the intervening night/morning of 9/10/1989 to 10/10/1989. The complaint was lodged on 8/12/1989 by P.W. 16, the brother of the deceased. The peculiar facts and circumstances of the case, including the conduct of the appellant of false missing complaint and attempt to destroy the evidence by throwing the body of the deceased in Katraj Ghat cannot be over looked. After due enquiry from the neighbours and other persons and knowing the background of the regular harassment and illicit relationship of the appellant, the complaint was filed. The learned Judge has rightly dealt with this aspect. In the present case, it is difficult to accept the defence case of the delay.

22. We have already noted that the complaint was lodged on 8/12/1989 by Ramesh Jadhav, P.W. 16 and the crime was registered accordingly. The investigation proceeded after two months from the date of offence. The statements were recorded of the witnesses after two months. There is no doubt about the delay in the matter. The Law of delay in lodging the F.I.R. is well settled. A.I.R. 1973 S.C. 501 Thullia Kali V. State of Tamil Nadu, 1992 Supp (2) S.C. 455 Haridial Singh V. State of Punjab, A.I.R. 1989 S.C. 135 Ganesh Bhavan Patel V. State of Maharashtra. The principle that the delay in lodging the F.I.R., if any, should be satisfactorily explained. The delay in recording the statements of witnesses and its related law is also settled in A.I.R. 1971 S.C. 804 Balkrishna Swain V. State of Orissa, and A.I.R. 1979 S.C. 135 Ganesh Bhavan V/S State of Maharashtra. The principle is that

> " unjustified and unexplained long delay on the part of investigating officer in recording the statement of material eye witnesses during investigation of murder case will render of evidence of such witnesses unreliable "

23. In the present case and in the peculiar facts and circumstances of the case, as referred above, according to us, there was justified explanation in

lodging the complaint and in recording the statements of the witnesses There is no doubt in the prosecution case, as the facts of this case no where suggest that the prosecution case is after thought or there is exaggerated and or concocted story, as a result of any prior deliberation and consultation. We have noted that the appellant had lodged misguiding and false missing complaint of the deceased and took no further steps to pursue the same. It is only the brother of the deceased who had lodged the complaint. The appellant in fact had sent letter Exh.58 to his father-in-law after 10/10/1989 and informed that the deceased had left his house on the night of 9/10/1989. The said letter was received on 18th October, 1989 by the deceased father. He therefore, sent his son to Pune, along with other members of the family to various places to search for the deceased. P.W. 17 has corroborated the prosecution case on this aspect. The brother of the deceased had visited and took search of her missing sister for more than 4 to 5 days, but they could not trace her out and therefore, various applications were filed with the Police Department Exh. 60 to 65. The complainant had explained the contents of the application dated 22/10/1989. The second application Exh.61 was addressed

to the Police Commissioner dated 23/10/1089. The other two applications dated 28/10/1989 were addressed to the Collector, as well as, to the Commissioner of Police, Pune. An application dated, 29/10/1989, was sent to the Home Minister. Last application was sent to the Sub-Inspector of Deccan Gymkhana Police Station, Shivaji Nagar Police Chowki, Pune on 14/11/1989.

23A. All these applications, failed to generate any thing, so far as police department is concerned. The complainant had expressed his suspicion about the accused in all these applications, therefore, he had no choice but to lodge the complaint in question, after two months. There is no doubt that the complainant had no control over the investigating agency. All these applications and the contents therein were consistent against the accused appellant. Therefore, there is no question of any concoction or falsity in the contents of the said application and the evidence led by the prosecution in support of the same. In this back ground we are also of the view that the delay in lodging the complaint, in the present case does not affect the prosecution case. The statements of the witnesses were thereafter recorded by Mr. Chandgude. We cannot over

look the law laid down by the Apex Court in A.I.R. 1973 Supreme Court 1409 (Ranbir V. State of Punjab) stating that;

> "The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got up witness to falsely support the prosecution case. In such cases, it is essential that the Investigating Officer should be asked specifically about the delay and the reason thereof. In the absence of query the evidence of a witness does not become untrustworthy merely because he was examined after the delay by the Investigating officer".

We also cannot over look the Apex Court decision reported in 1996 Criminal Law Journal 1134 (Dr.Krishna Bal V. State of Uttar Pradesh) That the convincing and reliable evidence of the witnesses cannot be discarded merely on the ground of inordinate delay in recording the statements. We have already noted in the present case that it is the appellant who had misguided the whole police machinery by filing false missing complaint. We are of the view that no benefit can be given to the appellant, as submitted , on the ground of delay, in lodging the complaint and or recording the statements by the investigating agency. We are of the view that the delay in question was justifiable and duly

explained. In view of this, the ground of delay on both the counts, as submitted by the advocate appearing for the defence is therefore, cannot be accepted to throw out the whole prosecution story. The reason given by the learned Sessions Judge, therefore, is correct.

24. In this background even if, there is delay in recovery of the weapon, or other material at the instance of the accused, still the prosecution case cannot be discarded, as in the present case, the investigating agency itself had moved after the complaint lodged by the complainant, after two months from the date of incident. In this case, the delay of recovery of weapons and or other muddemal need carefully scrutiny and deliberation, but not the total rejection. The appellant is not entitled for acquittal on this ground of delay, in the facts and circumstances of the present case.

25. SOLE CHILD TESTIMONY:- We have also noted that the conviction is also based on the testimony of Nilesh a child witness. The law is settled that the sole testimony of child witness can be taken note of read with other circumstances and corroborative evidence to

convict the accused. There is no doubt about the settled proposition of law that the evidence of child witness is required to be scrutinised and approached with great caution as laid down in A.I.R. 1977 S.C. 135 (Caetano Pledade Fernandis V. Union Territory of Goa, Daman and Diu). Even if, there are some omissions to the effect that he had not disclosed in his police statement that he saw the accused pressing the neck of his mother and his mother was wrapped in bedsheet. But still, the remaining testimony and evidence are sufficient to corroborate the circumstantial evidence to support the prosecution case. We cannot over look the fact that this child witness was in the custody of real brother of the accused from the next day of the incident till recording of his statement. There were no dispute on the record that the children were with the brother of the appellant, at Ulhasnagar after 10/10/1989. On the contrary it was the case that the appellant had not allowed the maternal uncle to meet the children, during this period. Therefore, the submission of the defence Counsel of possibility of tutoring has no force. However, it is clear from the remaining testimony of this witness that he had heard the shouts of his mother and at that time his father was beating her and after

some time his mother become quiet and his father lifted her towards the jeep. This sole child witness cannot be said to be unreliable. We cannot overlook the fact that Nilesh P.W. 13 is the son of appellant and at the relevant time of the incident he was in the house, when the appellant and the deceased were together on the fateful night. This wintess has further corroborated that the appellant was present at the relevant time in the house and thereafter, lifted the body of the deceased. On the next day morning the appellant had given false explanation, even to the children. We are of the view that the testimony of this sole eye witness Nilesh is also sufficient for the purpose of convicting the appellant, as other corroborating evidence including the medical evidence has supported the prosecution case and points out that the appellant and no one else had committed the crime. At this juncture the evidence of Dilip P.W. 14 who saw the vehicle at night near the house in question also cannot be overlooked. The bangle pieces found in the jeep No. MTJ 7595, which were duly attached and proved through P.W. 2 is also relevant. The admitted entries by the appellant Exh.28 and 29 made in the log book of the jeep in question, also corroborates the same, including the movement of the

vehicle on that fateful night as corroborated by P.Ws. 5,21 and 22.

26. SOME LACUNAS:- As in the present case the statements were recorded after two months from the date of incident and there were some omissions and improvements in the evidence of some of the witnesses but considering the over all view of the prosecution story, as well as, other corroborative oral, as well as, documentary evidence on the record, we are of the view that the prosecution has proved beyond reasonable doubt that the appellant had committed the murder and destroyed the evidence to avoid the punishment. Even if, there are some lacunas in not keeping and mixing the other articles with the articles in question before identifying the same, we are of the view that, only for that reason the prosecution case, as other wise duly proved, cannot be thrown out. In the present case, there is ample evidence and witnesses who identified all the basic articles and clothes, including P.W. 13, the son of the deceased and thereby supported and proved the prosecution’s case in this aspect also and we are in agreement with the view taken by the learned Sessions Judge on these issues also.

27. CONCLUSION:- Taking into consideration the background and as frequent ill-treatment and harassment to the deceased after 1986, as the appellant had illicit relations with Mangala, in this background the appellant had committed pre planned murder of his wife by strangulation. The appellant, thereafter, made false statement and gave false explanation to his children. The appellant had lodged false missing report of his wife. The appellant therefore, took all steps to destroy the evidence of his heinous crime to avoid punishments. The police thereafter on the complaint filed by the brother, P.W. 16 further initiated the investigation. At the instance of the appellant the body of the deceased was discovered along with various ornaments, articles and clothes. The Investigating Officer thereafter collected the material to prove each and every circumstance to link the appellant with the crime They were seen together lastly. Nilesh the son of the deceased and appellant was the eye witness to the heinous crime of the appellant. The prosecution has also proved other circumstances to link every aspect and circumstances which connect the appellant with the crime in question. The learned Judge based on the material

placed on the record rightly, considered all the issues and convicted the accused. We see there is no reason to interfere with the findings given by the learned Sessions Judge.

28 Taking into account about the findings we are of the view that the impugned judgment and order is correct. There is no perversity in the Judgment. There is no merit in the appeal. The appeal is therefore, dismissed.

[ANOOP V. MOHTA, J.] **[S.B.MHASE, J.]**